

EXHIBIT F

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LINDA FAIRSTEIN,)	
)	
Plaintiff,)	
)	Case No. 20-cv-8042 (PKC)
v.)	
)	
NETFLIX, INC., AVA DUVERNAY, and)	
ATTICA LOCKE,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR OMNIBUS MOTION *IN LIMINE*
REGARDING PLAINTIFF'S PURPORTED EXPERTS**

Bart H. Williams (*pro hac vice*)
Alyson C. Tocicki (*pro hac vice*)
PROSKAUER ROSE LLP
2029 Century Park East, Suite 2400
Los Angeles, California 90067
Phone: (310) 284-4520
bwilliams@proskauer.com
atocicki@proskauer.com

Seetha Ramachandran
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 11036
Phone: (212) 969-3455
sramachandran@proskauer.com

Natalie J. Spears (*pro hac vice*)
Gregory R. Naron (*pro hac vice*)
Jacqueline A. Giannini (*pro hac vice*)
DENTONS US LLP
233 South Wacker Drive, Suite 5900
Chicago, Illinois 60606
Phone: (312) 876-8000
natalie.spears@dentons.com
gregory.naron@dentons.com
jacqui.giannini@dentons.com

Justin N. Kattan
DENTONS US LLP
1221 Avenue of the Americas
New York, New York 10020
Phone: (212) 768-6700
justin.kattan@dentons.com

Future “Lost Profits”: Plaintiff’s claimed lost profits are purely hypothetical, [REDACTED]

[REDACTED]⁶ Instead, Mr. Bania’s damages analysis presumes that Plaintiff would have been signed to a new publishing contract and then “would have continued to author one book per year, until she is 83 years old,” with only a modest decline in sales/advances. (*Id.* ¶ 109, Schedule 6a.) Mr. Bania further speculates that the hypothetical publisher would be willing to pay Plaintiff **higher** advances for future novels than what she agreed to in her last contract, even though PRH expected Plaintiff’s future sales (and advances) to **decrease**. (*Id.* ¶¶ 105–06; Ex. 6, Ball Tr. at 104:7–19.)⁷

Mr. Bania’s damages calculation also includes a \$400,000 advance that, he claims, a publisher would have paid Plaintiff to write her memoir, but for the Series. (Ex. 3, Bania Rep. ¶ 114.) Mr. Bania bases this assumption on a hearsay March 2019 e-mail in which Ms. Fairstein’s agent relays nothing more than a publisher’s interest, rather than a concrete offer. (Ex. 4, Bania Tr. at 143:5–16; Ex. 7, E-mail from E. Newberg to L. Fairstein, Mar. 20, 2019.)

Causation as to “Series as a Whole”: Plaintiff also proffers Mr. Bania as an expert on “causation” as to economic damages—*i.e.*, he believes that the Series as a whole caused Plaintiff’s claimed lost profits. To support his causation opinion, Mr. Bania conducted a “Google Trends” analysis, which purports to show that Internet searches concerning Ms. Fairstein spiked around the

⁶ [REDACTED]

⁷ Mr. Bania speculates that Ms. Fairstein agreed to artificially low advances in her 2019 publishing contract “to mitigate against the potential for [her publisher] to cut ties with Ms. Fairstein.” (Ex. 3, Bania Rep. ¶ 105). Not only is there no evidence to support that presumption, it defies common sense since Ms. Fairstein and PRH “negotiated this deal in March of 2019,” several months before the Series aired. (Ex. 6, Ball Tr. at 102:17–103:15.)